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7 TAN DUC NGUYEN

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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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14 UNITED STATES OF AMERICA,) SA-CR-08-251-DOC
15 Plaintiff,)
16 v.) REPLY TO GOVERNMENT OPPOSITION
17 TAN DUC NGUYEN) TO MOTION TO SUPPRESS EVIDENCE
18 Defendant.)
19 _____)
20) Date: Jan. 19, 2010
21) Time: 9:00 AM
22)
23)

24 Comes now defendant Tan Duc Nguyen, together with counsel, and
25 responds to the government's opposition to his motion to suppress
26 evidence as follows.
27
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Dated: 1-13-2010

S./ H. Dean Steward
H. Dean Steward
Counsel for Defendant
Tan Duc Nguyen

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3 I. THE GOVERNMENT MISSES THE MARK IN THEIR REPLY

4 At several junctures, the government reply falls short of
5 answering the defense challenges. In order, they are:6 A. *THE CIRCUMSTANCES OF THE TRANSLATION*7 Judge Makino, the issuing judge on the warrant, had two types
8 of information before him in the lengthy law enforcement affidavit:
9 a few lines of the letter in question itself, and then pages of
10 information trying to connect the defendant to the letter.11 The information on the Spanish language letter itself is
12 critical, because it fails to establish that any crime had been
13 committed. The judge had a copy of the letter itself (Ex. "D" in
14 the original defense motion), and then an "unofficial translation"
15 (p. 2 of Ex. "D"). The translation should have raised questions in
16 the court's mind.

17 Who did the translation?

18 What was their background?

19 What was their expertise?

20 Were they court certified?

21 Were they bias?

22 Were they law enforcement?

23 Were they paid?

24 Why was the translation "unofficial" and what did that mean?

25 These question were vital because the affidavit depended on the
26 accuracy of the translation.

27 For example, law enforcement later hired a professor from USC

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1 to examine the letter, translate it and explain his translation.
2 Mr. Roberto Ignacio Diaz highlighted the importance of the
3 translation, and the controversy that later erupted over that
4 translation. In deed, the State Attorney General's Office later
5 affirmatively concluded that no crime had been committed, and no
6 state charges were ever filed.

7 *B. THE WORD 'EMIGRADO'*

8 According to the California Constitution: A United States
9 **citizen** 18 years of age and resident in this state may vote.
10 Cal.Const. Art. 2, §2 (emphasis added). Under 8 U.S.C.A.
11 §1101(a)(3) an "alien" means any person not a citizen or national
12 of the United States. A Washington State Court further explained:

13 The critical attribute which distinguishes
14 a citizen from an alien is that the citizen
15 possesses political rights, including the right
16 to vote, to hold elective office, and to serve
17 as a juror, as distinct from private or civil
18 rights held by both aliens and citizens, such
19 as the right to hold property and to receive public
20 assistance.

22
23 *Herriot v. City of Seattle*, 500 P.2d 101, 109-110 (1972) quoting
24 Stout, *Privileges and Immunities of National Citizenship and*
25 *Suffrage in the States*, 14 U.Pitt.L.Rev. 48, 69 (1952)..

26 In light of the Government's response, the definition of the
27 word "emigrado" becomes of the utmost importance. The proper

1 translation of the word "emigrado" is emigrant. The letter
2 specifically used the word "emigrado" instead of "inmigrante".¹
3 While usually interchangeable with the word "immigrant" the
4 difference is important. According to the Mirriam-Webster
5 dictionary, the definition of *emigrant* is:

6 one who leaves their place of residence
7 or country to live elsewhere.

8 From the same source, the definition of *immigrant* is:

9 a person who comes to a country to take up permanent
10 residence.

11 Under both state and federal law, a person must be a
12 citizen in order to vote. While an immigrant may be a
13 citizen, an emigrant by definition is not. Since the proper
14 translation of the letter states:"[I]f your residence in this
15 country is illegal or if you are an **emigrant...**" there was no
16 violation of any penal code, and no crimes committed.
17 Therefore, there was no probable cause to search Mr. Nguyen's
18 residence or campaign headquarters.

19 *C. AGENT WILLIAMS TOOK OVER THE JUDICIAL DETERMINATION
20 REGARDING PROBABLE CAUSE*

21 Rather than allow the Superior Court judge to review the

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24 ¹First, the translation of "inmigrante" is immigrant. Second, Mr.
25 Nguyen provided the government with an email correspondence between
26 Mr. Roger Rudman, campaign manager, and Mr. Robert Tapia, translator
27 of the letter from the campaign. In that version the translation
read: "However, if you are here illegally, or just a resident with a
green card..." There were no versions other than the ones provided
by the government that used the word 'immigrant'.

1 facts presented and make the determination regarding probable
2 cause, Agent Williams took over the function:

3 "I do not believe Tan Nguyen's denial that he knew
4 nothing concerning..."
5 *Bates 265*

6 "His admission of the e-mail exchange...was selective
7 and incomplete."
8 *Id.*

9 "I do not believe Tan Nguyen's statement about..."
10 *Id.*

11 "It does not make sense that a Los Angeles police
12 officer
13 would..."
14 *Id.*

15 "Tan Nguyen's statement...does not make sense."
16 *Id.*

17 The constitutional requirement is that an impartial
18 magistrate review the facts as presented to determine
19 probable cause. *Shadwick v. City of Tampa* 407 U.S. 345, 350
20 (1972). Here, agent Williams took over the function,
21 rendering opinions and making credibility determinations, in
22 violation of the impartial magistrate review.

23 *D. NO CONNECTION BETWEEN DEFENDANT AND LETTER*

24 While agent Williams tries mightily to connect defendant
25 Tan Nguyen to the letter in question, a careful reading of
26 her lengthy affidavit fails to make that connection.

27 *II. LEON CASE*

28 As articulated in *Leon*, and echoed by the government in
29 their opposition, the "good faith" exception to the
30 exclusionary rule allows the admission of evidence, despite
31 the absence of probable cause, "when an officer acting with
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1 objective good faith has obtained a search warrant from a
2 judge or magistrate and acted within its scope." 468 U.S. at
3 920; see also Moore, 968 F.2d at 222 ("The test of objective
4 good faith is 'whether a reasonably well trained officer
5 would have known that the search was illegal despite the
6 magistrate's authorization.' ") (quoting Leon, 468 U.S. at
7 922 n. 23, 104 S.Ct. at 3420 n. 23)."

8 **"The exception, however, will not apply when, inter
9 alia, the warrant application "is so lacking in indicia of
10 probable cause as to render reliance upon it unreasonable."**
11 **Moore, 968 F.2d at 222 (citing Leon, 468 U.S. at 923, 104
12 S.Ct. at 3420).** [emphasis added]

13 This is the precise position found here- any reasonable
14 law enforcement officer would see that no crime was
15 committed, and therefore, there can be no good faith.

16 III. Conclusion

17 For the reasons set out above, and those in the
18 defense's initial motion, all items of evidence and the
19 "fruit" there from must be suppressed.

20 Dated: 1-12-2010

H. Dean Steward
H. Dean Steward
Counsel for Defendant
Tan D. Nguyen

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1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED THAT:

3 I, H. Dean Steward, am a citizen of the United States, and am
4 at least 18 years of age. My business address is 107 Avenida
5 Miramar, Ste. C., San Clemente, CA 92672.

6 I am not a party to the above entitled action. I have
7 caused, on Jan. 13, 2010, service of the defendant's:

8 **RESPONSE TO GOVT OPPOSITION**

9

10 on the following parties electronically by filing the
11 foregoing with the Clerk of the District Court using its ECF
12 system, which electronically notifies counsel for that party.

13 **AUSA Jennifer Waier**

14

15 I declare under penalty of perjury that the foregoing is true
16 and correct.

17 Executed on JAN. 13, 2010

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19 s./ H. Dean Steward

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